

--Internal Deliberative--

OR CZARA FAQs – Written March 12, 2013

Prep for Dan and Christine

### **How are the Coastal Nonpoint Pollution Control Program (CNPCP) and Coastal Zone Act Reauthorization Amendments (CZARA) related?**

Congress established the CNPCP in 1990 under Section 6217 of CZARA. NOAA and EPA jointly administer CZARA. The federal requirements are designed to restore and protect coastal waters from nonpoint source pollution. They also require coastal states that participate in the National Coastal Zone Management Program to develop programs, backed by enforceable policies, that provide for the implementation of a set of management measures based on guidance published by EPA (aka the (g) guidance because the subsection (g) calls for it)<sup>1</sup>. The Coastal Nonpoint Program relies on state coastal zone management and water quality programs to apply management measures to prevent and mitigate polluted runoff from six main sources:

- forestry,
- agriculture,
- urban areas,
- marinas,
- hydromodification (shoreline and stream channel modification), and
- loss of wetlands and riparian areas.

### **What does Oregon's Coastal Nonpoint Program look like?**

In July of 1995, Oregon completed its Program Submittal for the CNPCP. Oregon's CNPCP Submittal described existing programs and proposed work tasks that would meet the terms of CZARA and EPA and NOAA's guidance and work to improve coastal water quality in Oregon's coastal zone. Current state water quality, wetland, and land use laws, as well as the Forest Practices Act and the early development of *The Oregon Plan* for Salmon and Watersheds, insured that the state already met many requirements of CZARA.

In January 1998, after reviewing the state's program submittal, EPA and NOAA returned their findings and granted a conditional approval to Oregon's program. The 1998 findings document placed roughly 40 conditions on Oregon's program that it needed to address before it could receive full approval for its CNPCP. Today, only three conditions remain: 1) additional management measures for forestry; 2) inspection of existing on-site disposal systems; and 3) new development. Although EPA and NOAA found that Oregon had satisfied the requirements for the forestry management measures at the time of conditional approval, approving the state for those measures, the agencies also identified that additional forestry management measures were needed because of the sensitive salmonid population. NOAA and EPA similarly required Washington to develop additional management measures for forestry as well.

### **What are the details of the OR CZARA Settlement Agreement and what did we discuss with ODEQ?**

In 2007, NWEA filed a lawsuit against EPA and NOAA for not making a final decision to approve or disapprove Oregon's CNPCP and for not withholding CZMA Section 306 grant funds and CWA Section 319 grant funds. In September 2010, EPA and NOAA signed a Settlement Agreement with NWEA with two dates: By Nov. 15, 2013, EPA and NOAA must announce the agencies' intent to approve/disapprove; and by May 15, 2014, NOAA and

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<sup>1</sup> While EPA published the technical (g) guidance. NOAA and EPA jointly published the programmatic guidance and subsequent guidance memos clarifying the programmatic guidance that provides additional guidance on what states need to do to have an approved program.

EPA must make a final decision to approve/disapprove Oregon's program. ODEQ proposed the following to address the remaining three CNPCP conditions:

- 1) Develop additional forestry measures for forestry –
  - a) by completing implementation-ready TMDLs in the Mid-Coast Basin and other coastal basins; or
  - b) doing a forestry rulemaking.
- 2) On-site disposal systems – develop rule for time-of-transfer inspections
- 3) New development – develop guidance on how to deal with new development

**How would Oregon be affected if the CNPCP weren't approved?**

**Funds Lost**

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### Impacts from Funding Loss

- DLCD uses its funding to implement the state's federally approved Coastal Management Program, including addressing critical coastal issues such as ocean planning (Territorial Sea Plan), climate change adaptation, habitat, and water quality issues.
- ODEQ relies heavily in 319 funding to support its TMDL program, and ODEQ would be affected in its ability to complete TMDLs.
- Oregon programs use 319 and 306 funds to leverage funding for other watershed restoration projects, so pace and extent of restoration would be diminished.

**Reputation** – No other state has a disapproved coastal nonpoint program. Oregon prides itself on its coastal coho salmon recovery program and the Oregon Plan for Salmon and Watersheds and receives and spends tens of millions of dollars each year on these two programs. Evaluating and revising State regulatory programs was one the four major elements of what the State proposed in the Oregon Plan. Monitoring and the Governor's independent scientific oversight group (IMST), a second major element of the Oregon Plan, have demonstrated since 1999 that improvements to OR's State Regulatory programs (forestry, ag/lowland management) are needed. A disapproval would publicly acknowledge significant shortcomings in the Oregon's programs and approach for addressing the most widespread land uses in the State and potentially put foundation and federal funding (beyond 319/306) at risk.

### What would happen if Oregon withdrew from the Coastal Zone Management Program?

- Only states that choose to participate in the voluntary National Coastal Zone Management Program are required to develop Coastal Nonpoint Programs.
- If Oregon chooses to withdraw from the NCZMP, it would no longer be subject to the CZARA penalty provision and would retain full funding for its Section 319 Program.

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- **HOWEVER...**withdrawal from the NCZMP would mean the state would lose:

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- Federal Consistency authority under Section 307 of the CZMA which ensures that federal actions (direct activities as well as license and permit and financial assistance activities) that have a foreseeable effect on Oregon's coastal uses and resources need to be consistent with the state's policies.
  - This is an important incentive for states to participate in the NCZMP so potential financial impacts to CZM Sect. 306 and CWA Sect. 319 may not be enough to motivate the state to withdraw from the NCZMP.
- Inability for deepwater port in federal waters off the Oregon coast to be licensed.
  - Under the Deepwater Ports Act, the adjacent coastal state that the deepwater port is to be directly connected to by pipeline must have, or is making good progress towards, a federal approval coastal management program.
  - This only applies to deepwater ports as defined by 33 USC Chapter 29 § 1502(9)—a fixed or floating structure located in federal waters used as a port or terminal for the transportation or storage of oil or natural gas for transportation to any state.

### What is required in Oregon for EPA and NOAA to approve the programs?

State coastal nonpoint programs must provide for the implementation of the management measures, backed by enforceable authorities. State Coastal Nonpoint Programs also have programs in place to monitor and track the implementation of management measures.

To receive full approval, CZARA states that each coastal nonpoint program must “provide for the implementation, at a minimum, of management measures in conformity with the guidance published under section (g)....” (6217(b)). The guidance, *Coastal Nonpoint Pollution Control Program: Program Development and Approval Guidance*, explains that state programs must:

- identify NPS categories or subcategories that will be addressed;
- identify management measures to be implemented for those categories and subcategories; and
- describe the process by which the state will ensure the implementation of the management measures.

States do not have to be implementing the measures to receive approval.

Section III.C.3 of the Program Development and Approval Guidance (pg. 20-21) provides additional information on how a state can show it will ensure implementation of the management measures. At a minimum, the state program will:

- Describe the scope, structure, and coverage of the implementation program
- Describe the organization, structure, and authorities of the state/local agency that has responsibility for implementing the program, including identifying the lead agency (if outside the 319 or CZM programs, a description of how the lead agency and its authorities have been incorporated into the coastal nonpoint program) and a description of how the lead agency expects to implement the program including, for example, the number of staff and general responsibilities, cost of the program, and potential funding sources.
- Include a schedule with milestones for achieving full implementation of the management measures within 3 yrs (Note: The 1998 “Administrative Changes” guidance later increased the implementation time to 15 yrs given the complexities of the program)
- Identify enforceable mechanisms and policies to ensure implementation. If that authority is outside the 319 or CZM programs, the state must include provisions to ensure that the governmental body with the statutory authority exercises that authority (i.e., MOUs, EOs, or administrative directives).
- Describe the mechanisms to improve coordination among state agencies and among state and local officials responsible for land use and water quality programs and permitting/enforcement, etc.
- Describe a process to identify practices to achieve the management measures.
- Describe activities to ensure continuing performance and long-term effectiveness of the management measures through proper operation and maintenance.
- Describe state activities to monitor the effectiveness of the management measures.

#### **What does Oregon need to do to satisfy the condition for additional management measures for forestry on its program?**

Generally, EPA and NOAA are looking for the state to address three areas for forestry. EPA and NOAA cannot require Oregon to specific management measures, but the measures would ideally address the following:

- Roads – inventory/assess forest roads, for roads causing WQ impairment; implement new road BMPs and where necessary fix problem roads within reasonable timelines; establish milestones and road performance targets to be met within reasonable timelines;
- Landslide prone areas – identify high risk landslide prone areas, develop and require management measures on high risk areas where management could increase landslide potential that could impact WQ/large wood delivery, provide landowner options like certification by licensed geologist where risk or potential impacts are not a problem; and
- Riparian buffers – increased riparian protection adjacent to small and medium size streams, including non-fish bearing streams (Type “N”)

#### **What does Oregon need to do to satisfy the condition for new development on its program?**

The (g) guidance requires states to ensure the site is permanently stabilized to reduce TSS loadings by 80% or reduce the post-development loadings of TSS so that the average annual TSS loadings are no greater than pre-development loadings. In addition, to the extent practicable, states need to maintain post-development peak runoff rate and average volume at levels that are similar to pre-development levels. To address its new development condition, Oregon is proposing to develop guidance and an outreach program for TMDL Implementation Plan Development for Urban/Rural Areas within the CNPCP Management Area.

### **What does Oregon need to do to satisfy the condition for OSDS on its program?**

The (g) guidance requires states to inspect OSDS at a frequency to ascertain whether OSDS are failing. NOAA and EPA have agreed that states can meet this measure in several ways such as passing state laws requiring regular OSDS inspections (every 3-5 yrs, or, at a minimum, at time of transfer) by a trained/certified inspector, demonstrating that most of the counties in the CNPCP management area have ordinances requiring regular OSDS inspections, demonstrating that most lending institutions voluntarily require point of sale inspections as a requirement for a loan, demonstrating that through a variety of state, local and voluntary programs (including dedicated funding to support voluntary OSDS inspection programs) the state will reach most of the existing systems within the CNPCP within 15 yrs.

To address its condition, Oregon has pursued a rule change to require point of sale inspections within the CNPCP management area. However, passage of the rules by the EQC has been delayed due to concern from a couple of state legislators that are opposed to the rules and because a recent ballot measure prevents ODEQ from collecting a fee for time of transfer inspection reports to support the program.

**DEQ, the Governor's Office, and the plaintiffs have raised equity/priority issues related to agriculture as a sector where additional federal focus is warranted.** EPA and NOAA recognize that although Oregon has satisfied the agriculture management measure requirements and has processes in place to identify additional management measures when needed, water quality impairments due to agriculture are still occurring. This is an issue NWEA has raised several times in recent letters to NOAA and EPA. The Western Washington Tribes are raising similar concerns regarding Washington's agricultural practices. Given the ongoing regional concerns regarding agriculture, EPA may want to work with Oregon to continue to strengthen its agricultural programs related to water quality.

NOAA and EPA placed two conditions<sup>2</sup> on Oregon's program related to agriculture which the state has satisfied.

Oregon has met this condition. However, additional areas for improvement could include:

- Additional Enforcement and corrective actions related to impaired water quality on agricultural lands, including enforcement related to CAFO inspections
- Updating of Agricultural Water Quality Management Area Plans (AWQMAPs, or SB1010 plans) and associated administrative rules to specifically address areas with water quality impairment;

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<sup>2</sup> **CAFOS:** Include in its program management measures in conformity with the 6217 (g) guidance for facilities where animals are confined for less than four months and that do not have prepared surfaces or wastewater control facilities. NOAA and EPA believe Oregon has met these conditions through revisions to its CAFO rules, its AWQMA planning process which includes language consistent with the 6217(g) measures the appendices of all plans, and specific programs for nutrient and irrigation management. We notified the state of our unofficial decision in an interim decision document on January 13, 2004. However, this decision has not gone out for public comment and could be adjusted if we feel the programs and authorities no longer enable Oregon to satisfy its agriculture conditions.

**Erosion & Sediment Control, Nutrient, Pesticide, Grazing, and Irrigation Water Management:** Oregon will (1) designate agricultural water quality management areas (AWQMAs) that encompass agricultural lands within the 6217 management area, and (2) complete the wording of the alternative management measure for grazing, consistent with the 6217(g) guidance. Agricultural water quality management area plans (AWQMAPs) will include management measures in conformity with the 6217(g) guidance, including written plans and equipment calibration as required practices for the nutrient management measure, and a process for identifying practices that will be used to achieve the pesticide management measure. The State will develop a process to incorporate the irrigation water management measure into the overall AWQMAPs. Within five years, AWQMAPs will be in place.

- Establishment of clearer milestones and priorities for restoration of impaired waters and salmonid habitat on agricultural lands;
- Closer alignment of agriculture programs (AWQMAPs and associated administrative rules, USDA program requirements) to water quality programs;
- Enhanced State programs to minimize the effects of chemical applications on water quality, including pesticide effects on salmonids and riparian buffers

### **Who are the program contacts?**

#### **NOAA**

- Margaret Davidson (Acting Director Office of Ocean and Coastal Resource Management)--by phone ([margaret.davidson@noaa.gov](mailto:margaret.davidson@noaa.gov))
- Joelle Gore (Acting Division Chief, OCRM Coastal Programs Division)--by phone ([joelle.gore@noaa.gov](mailto:joelle.gore@noaa.gov))
- Kris Wall (Northwest Regional CZM Specialist, Portland) ([kris.wall@noaa.gov](mailto:kris.wall@noaa.gov))

#### **DLCD**

- Jim Rue (Director)—
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